



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
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September 7, 2006

Ref: 8ENF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard O. Curley, Jr.
Counsel for Atlantic Richfield Company
Holland & Hart, L.L.P.
P.O. Box 8749
Denver, CO 80201-8749

Re: International Smelting and Refining Site (IS&R);
Conservation Area UAO for Removal Activities,
Docket No. CERCLA-08-2006-0010

Dear Mr. Curley,

As we recently discussed, the US Environmental Protection Agency, Region 8 (EPA), is issuing to the Atlantic Richfield Company (AR) a Unilateral Administrative Order for Removal Response Activities (Order)(enclosed), effective five (5) days from the date of issuance by EPA. The Order requires AR to conduct specified removal actions at the Conservation Area of the IS&R Superfund Site, Tooele County, Utah, and to submit a final report on the actions performed.

EPA discussed with you the option of performing this work under an administrative order on consent. You indicated that in light of the need to begin this work expeditiously, your client, Atlantic Richfield, would not object to the issuance of a unilateral administrative order for the work in lieu of negotiating an order on consent. EPA recognizes AR's efforts in the development of a suitable work plan, and anticipates your continued cooperation during the removal phase. If you have any questions regarding this matter, please call me at (303) 312-6912.

Sincerely,

SIGNED
James Stearns
Staff Attorney

Enclosure

cc: Erna Waterman, 8EPR-SR; EPA Remedial Project Manager
John Works, EPA Technical Enforcement Program



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Pamela Kaye, ARCO Environmental Remediation, LLC
Tony Howes, Utah DEQ

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

IN THE MATTER OF:

**International Smelting and Refining
Site
Tooele County, Utah**

**Atlantic Richfield Company

Respondent.**

**UNILATERAL ADMINISTRATIVE
ORDER FOR REMOVAL RESPONSE
ACTIVITIES**

**U.S. EPA Region VIII
Docket No. CERCLA-08-2006-0010**

**Proceeding Under Section 106(a) of the
Comprehensive Environmental
Response, Compensation, and Liability
Act, as amended, 42 U.S.C. § 9606(a)**

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APPENDICES: 1a and b - Site Maps
 2 - Action Memorandum
 3 - Work Plan

I. JURISDICTION AND GENERAL PROVISIONS

1. This Order is issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended (“CERCLA”), and delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and to the undersigned EPA officials.
2. This Order pertains to property located at the International Smelting and Refining Site (“IS&R Site”), located on the western slope of the Oquirrh Mountains in Tooele County, Utah, and depicted generally on the map attached as Appendix 1a to this Order. In particular, this Order pertains to that portion of the IS&R Site known as the Conservation Area (“Conservation Area” or “Site”) depicted on the map attached as Appendix 1b to this Order. This Order requires the Respondent to conduct the Removal Actions described herein to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.
3. EPA has notified the State of Utah of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondent and Respondent's heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.
5. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Action Memorandum” shall mean the Action Memorandum issued by EPA for the Conservation Area of the IS&R Site on June 20, 2006, and attached to this Order as Appendix 2.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Order as provided in Section XVIII.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Interest” shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the United States Code, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time of accrual.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Order” shall mean this Unilateral Administrative Order and all appendices attached hereto, which are hereby incorporated by reference. In the event of conflict between this Order and any appendix, this Order shall control.

“Paragraph” shall mean a portion of this Order identified by an arabic numeral.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq., (also known as the Resource Conservation and Recovery Act).

“Removal Actions” shall mean those activities to be undertaken by Respondent in accordance with the Conservation Area Removal Action Work Plan, attached to this Order as approved by EPA pursuant to this Order.

“Section” shall mean a portion of this Order identified by a roman numeral.

“Site” or “Conservation Area” shall mean the area designated and known as the Conservation Area, comprising part of the International Smelting & Refining National Priority List Superfund Site, in Tooele County, Utah, depicted generally on the map attached as Appendix 1a and in more detail on the map attached as Appendix 1b to this Order. The Site also encompasses any areas that hazardous substances or pollutants or contaminants from Site activities are found to have been placed on or to have migrated.

“Waste Material” shall mean (1) any “hazardous substance” under section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

“Work” shall mean all activities Respondent is required to perform under this Order.

“Work Plan” shall mean the plan entitled “Conservation Area Removal Action Work Plan” (attached hereto as Appendix 3), and any modifications made to the Work Plan in accordance with this Order, as approved by EPA pursuant to this Order.

IV. FINDINGS OF FACT

Site Description and History

7. In 1910, International Smelting & Refining Company (IS&R) began operating a copper smelter (also referred to as the “Tooele Smelter”) on the western slope of the Oquirrh Mountains approximately three miles east of Tooele, Utah. In 1914, Anaconda Copper Mining Company, later known as The Anaconda Company (Anaconda), acquired all of the stock of IS&R, which was then dissolved. A new corporation, International Smelting Company (ISC), was formed and Anaconda, the major shareholder of ISC, transferred the assets of the Tooele Smelter facility to ISC. In 1934, ISC changed its name to International Smelting & Refining Company, the same name as the company that first operated the facility. The newly formed IS&R owned and operated the Tooele Smelter until 1973 when IS&R was merged into Anaconda. The Respondent, Atlantic Richfield Company (AR), acquired Anaconda in 1977 and merged Anaconda into AR in 1981. Respondent is the current owner of the IS&R Site.

8. For more than sixty years, from 1910 until 1972, the Site was used for processing lead, copper and zinc ores. Copper smelting began in 1910 under the ownership of IS&R, with 4,000 tons of copper ore per day being processed. In 1912, IS&R built a lead smelter. Over the years, a lead-zinc sulfide flotation mill and a slag treatment plant for lead and zinc recovery were added. Copper production ceased in 1946, when the copper smelter closed. Lead smelting was discontinued in 1972. The smelter facility was demolished in 1972. From 1974 through 1981, the Anaconda Company constructed and operated a mill known as the Carr Fork Operations, in or near Pine Canyon. These activities resulted in the creation of large amounts of waste materials containing heavy metals, including lead and arsenic.

9. Wastes from smelting and refining operations including tailings piles, slag, settling ponds, land-filled material, and additional smelter wastes are present on portions of the IS&R Site. The IS&R Site comprises approximately 1,200 acres.

10. The Utah Mined Land Reclamation Act of May 1975, required reclamation for the Carr Fork Operations. Respondent performed reclamation activities in both areas, the IS&R and the Carr Fork operations, under the oversight of the Utah Division of Oil, Gas and Mining. Part of the reclamation work was performed in the Conservation Area, including placement of cover material to support re-vegetation, consolidation of waste from areas of the IS&R Site and establishment of a permanent waste repository. The Removal Action required under this Order addresses portions of the waste repository cover.

11. In 1990, the Utah Division of Oil, Gas and Mining released Respondent of further mining reclamation liability at the IS&R Site.

12. In April 1994, AR transferred a conservation easement to the State of Utah Division of Wildlife Resources (Division) that established the Conservation Area boundaries and designated the

Division as Area manager for certain conservation purposes. Public access is generally restricted under the easement, but additional uses recognized under the easement, pursuant to pre-existing leases, include a gun firing range used by local citizens and City of Tooele, Utah, police.

13. In accordance with Section 105 of CERCLA, the IS&R Site was listed on the National Priority List, as defined in Section 105 of CERCLA, as amended, 42 U.S.C. § 9605, on July 27, 2000.

14. On or about September 18, 2001, AR entered into the Administrative Order on Consent for Remedial Investigation/Feasibility Study, EPA Docket No. CERCLA-08-2001-12, ("RI/FS Order"), to perform sampling activities at the Site to characterize the levels and extent of contamination. AR sampled the Conservation Area as part of the RI/FS. The RI/FS work is currently underway at the IS&R Site.

15. The Conservation Area is located on the western edge of the Site. This removal action addresses identified areas within the Conservation Area associated with stressed vegetation and remaining surface contamination.

16. Heavy metal soil contamination in the Conservation Area is a result of historical flooding and the fallout of stack emissions from operations at the IS&R Site.

Release or Threatened Release

17. Operation of the Tooele Smelter and Carr Forks facilities, including transport of materials, resulted in the deposition of Waste Material containing heavy metals, including lead and arsenic, in and at areas near the Site, in levels that may threaten human health or the environment.

18. From December 4, 2001, to June 13, 2004, AR, under EPA oversight in connection with the RI/FS Order, performed soil sampling activities at the Conservation Area to define the areal extent of contamination. These sampling efforts identified elevated concentrations of contaminants of concern, including lead and arsenic, in the soils. More recent investigation and sampling identified areas within the Conservation Area still impacted by contamination. These include areas of stressed vegetation and areas of remaining surface contamination above soil action levels for the IS&R Site. The results of these sampling activities are included in reports submitted by AR to EPA and are summarized in the August 2004 Remedial Investigation Report (RI Report).

19. The RI Report provides the comprehensive results of the soil sampling at the IS&R Site performed under EPA oversight. Based on these sampling results, at the Conservation Area, arsenic ranged from 89 ppm to 4,545 ppm and lead sampling results ranged from 2,321 ppm to 14,850 ppm.

Endangerment

20. The above-described hazardous substances and pollutants and contaminants are contained in the soils in concentrations and quantities that may pose an imminent and substantial endangerment to the public health and the environment. Outlined below are the specific endangerment criteria for the major contaminants of concern found on the Site:

21. Multiple migration pathways and exposure routes exist within the Conservation Area Site through which humans may be exposed to toxic concentrations of the contaminants of concern. The principle pathways within this area include, for recreational or casual use: ingestion of contaminated surface soils and ingestion and inhalation of airborne soil particles and contaminated dust.

22. Young children and adults may experience adverse health effects when exposed to elevated concentrations of lead and arsenic and other metals in the soil. The primary route of exposure is via incidental ingestion of the contaminated soil. Direct ingestion of contaminated soil can result from actual consumption of soil or through the mouthing of contaminated objects. Children are the most susceptible to exposure through this pathway. Other routes of exposure include inhalation of wind-blown soil particles and dermal contact with the soil.

23. Outlined below are the specific endangerment criteria for the major contaminants of concern found on the Site:

Arsenic – Excess exposure to arsenic is known to cause a variety of adverse health effects in humans. These effects depend on exposure level and duration. Arsenic is a known human carcinogen. Inhalation exposure is associated with increased risk of lung, gastrointestinal, renal or bladder cancer. Oral exposure to arsenic is associated with skin, liver, and bladder cancer. At very high doses, oral exposure to arsenic elicits nausea and vomiting. Lower doses over a chronic time period may elicit skin abnormalities, such as hyperkeratosis; kidney, and liver toxicity.

Lead – At high doses lead exposure is associated with adverse effects on reproduction and development, as well inhibition of heme synthesis. At lower doses, impairment of the nervous system in young children is considered to be of greatest concern. Younger children are more susceptible to lead exposure because they absorb lead from their gastrointestinal tracts at a greater rate than adults do, their neurological systems are still rapidly developing, and they have more direct contact with soil and indoor dust than adults do. These neurological effects manifest as decreased I.Q., shortened attention span, and decreased hand and eye coordination. EPA classifies lead as a B2 carcinogen. Studies in animals show an increased incidence of kidney tumors in association with very high levels of lead exposure.

24. In June 2003, EPA completed a risk assessment entitled "Baseline Human Health Risk Assessment for the International Smelting and Refining Site Tooele County, Utah (Final)" USEPA, Region 8, June 2003 ("EPA Risk Assessment"). Additional information relating to risk assessment and action levels at the Site is presented in a document entitled "Human Health Cleanup Levels for Arsenic and Lead in Soil at the IS&R Site," (2003).

25. Health-based action levels were established by EPA based on the risk assessment performed at the Site. EPA has identified soil action levels for this Removal Action of 8,000 ppm for lead and 900 ppm for arsenic. These action levels are consistent with action levels for the other non-residential areas of the IS&R Site. Soil lead and arsenic levels in the Conservation Area, subject to this Removal Action, exceed the action levels identified for this Removal Action.

Respondent

26. Respondent is Atlantic Richfield Company. Atlantic Richfield Company is a Delaware corporation registered in the State of Utah as a qualified, active corporation in good standing, organized in the State of Utah on April 30, 1985.

27. Respondent is the current “owner” and “operator” and was the “owner” and “operator” at the Site at the time of disposal of hazardous substances or pollutants or contaminants at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2).

Response Actions

28. There have been prior CERCLA response actions at the Site, including the RI/FS, and specifically for the Conservation Area, the sampling and investigatory efforts described above. Pursuant to the Action Memorandum, approximately 5,000 cubic yards of contaminated soil should be removed and the excavated areas backfilled with clean soil, and approximately 1.4 acres of stressed vegetation should be addressed through application of clean cover and re-planting.

29. EPA has incurred response costs in both its sampling and oversight activities at and in connection with the Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

30. Based on the Findings of Fact set forth above and the Administrative Record supporting this Removal Action, EPA has determined that:

- a. The Site is a “facility” as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The Waste Material found at the Site, as identified in the Findings of Fact above, include “hazardous substance(s)” as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and “pollutants or contaminants” as defined by section 101(33) of CERCLA, 42 U.S.C. § 9601(33). These include lead and arsenic.
- c. Respondent is a “person” as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for performance of response actions and for response costs incurred and to be incurred at the Site. Respondent is the current “owner” and “operator” of the facility and was the “owner” and/or “operator” of the facility at the time of disposal of hazardous substances, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
- e. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The conditions present at the Site constitute an imminent and substantial endangerment to public health or welfare or the environment within the meaning of section 106(a) of CERCLA,

42 U.S.C. § 9606(a). These conditions include, but are not limited to: actual or potential exposure to human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; this factor is present at the Site due to the existence of metals, including lead and arsenic, in the soils at the Site and the proximity of residential areas and other areas to which people and animals have access; and the high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate, due to wind and tracking or other transport of soils by human activity.

g. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, are not inconsistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation.

VI. ORDER

31. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondent comply with the following provisions, including, but not limited to, all attachments (appendices) to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

Notice of Intent to Comply

32. Respondent shall notify EPA in writing within ten (10) days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of Respondent to provide such notification within this time period shall be a violation of this Order by Respondent.

Designation of Contractor, Project Coordinator, and EPA Project Coordinator

33. a. Respondent shall perform the Removal Actions or retain a contractor(s) to perform the Removal Actions. Respondent shall notify EPA of Respondent's qualifications or the name(s) and qualification(s) of such contractor(s) within ten (10) business days of the effective date of this Order. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Removal Actions under this Order at least fifteen (15) days prior to commencement of such Removal Actions. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by Respondent, or of Respondent's choice of itself to do the Removal Actions. If EPA disapproves of a selected contractor or Respondent, Respondent shall retain a different contractor or notify EPA that it will perform the Removal Actions itself within five (5) business days following EPA's disapproval and shall notify EPA of that contractor's name or Respondent's name and qualifications within five (5) business days of EPA's disapproval.

b. Within ten (10) days after the effective date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present onsite or readily available during Site Work. EPA retains the right to disapprove of any Project Coordinator named by Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of

that person's name and qualifications within five (5) business days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

34. EPA has designated Erna Waterman, Superfund Remedial Section, Region 8, as its Project Coordinator. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to:

Erna Waterman
International Smelting & Refining Remedial Project Manager
Superfund Remedial Section, 8EPR-SR
US EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Phone: (303) 312-6762
Fax: (303) 312-6897

Work to Be Performed

35. Respondent shall perform, at a minimum, all activities contained in the Conservation Area Removal Action Work Plan, attached hereto as Appendix 3, for investigation of threatened or actual releases of metals at the Site, including but not limited to lead and arsenic, and prepare and submit a final report on the work performed. Protocols for any necessary sampling in connection with the Work shall be under the direction of EPA. Respondent shall implement the Work Plan in accordance with the schedule provided therein.

36. Respondent shall perform, at a minimum, all actions necessary to implement the Work Plan. Respondent shall implement the Health and Safety Plan (HASP), attached hereto as part of Appendix 3 to this Order, to ensure the protection of health and safety during performance of Work under this Order.

a. Respondent shall implement the Quality Assurance Project Plan (QAPP), as accepted by EPA for the IS&R Site, during the performance of these removal actions. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall implement and conform to the Quality Assurance Project Plan (QAPP), accepted by EPA for the IS&R Site, that ensures that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. As specified in the approved QAPP, Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may

consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing actions under this Order. Respondent shall notify EPA not less than five (5) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

Reporting

d. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order by no later than the seventh (7th) day of each month during performance of the Work until the cessation of the Removal Actions required under this Order, unless otherwise directed in writing by the EPA Project Coordinator. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of Work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

e. Any Respondent and Successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section VI., Paragraphs 35 and 36 of this Order (Access to Property and Information).

Final Report

f. Within thirty (30) days after completion of all Removal Actions required under this Order, the Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in section 300.165 of the NCP entitled “OSC Reports”. The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the Removal Actions (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine

and imprisonment for knowing violations.”

Access to Property and Information

37. Respondent shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Utah representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent’s behalf during implementation of this Order.

38. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the effective date of this Order, or as otherwise specified in writing by the EPA Project Coordinator. Respondent shall immediately notify EPA if, after using its best efforts, Respondent is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the Removal Actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondent for all costs and attorney's fees incurred by the United States in obtaining access for Respondent.

Record Retention, Documentation, Availability of Information

39. Respondent shall preserve all documents and information relating to Work performed under this Order, or relating to the hazardous substances found on, or released from, the Site, for ten years following completion of the Removal Actions required by this Order. At the end of this ten year period and thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the ten-year period at the written request of EPA.

40. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

41. Respondent shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondent shall keep the “privilege log” on file and available for inspection. EPA may at any time challenge claims of privilege through negotiations or otherwise as provided by law or the

Off-Site Shipments

42. All hazardous substances or pollutants or contaminants removed offsite pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the EPA “Revised Procedures for Implementing Off-Site Response Actions,” OSWER Directive Number 9834.11, November 13, 1987. Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and the above directive. Unless impracticable, prior notification of out-of-state waste shipments should be given to the EPA Project Coordinator consistent with OSWER Directive 9330.2-07.

Compliance With Other Laws

43. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA section 121(e) and 40 C.F.R. section 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws. (see “The Superfund Removal Procedures for Consideration of ARARs During Removal Actions,” OSWER Directive No. 9360.3-02, August 1991).

Emergency Response and Notification of Releases

44. Respondent shall notify EPA at least 48 hours prior to performing any on-site Work pursuant to the Work Plan. This is a one-time notice requirement for the Work described herein. Respondent shall not commence or undertake any Removal Actions at the Site without prior EPA approval and except in conformance with the terms of this Order.

45. If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the EPA Project Coordinator or, in the event of his or her unavailability, shall notify the National Response Center at (800) 424-8802 of the incident or Site conditions. If Respondent fails to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

46. In addition, in the event of any release of a hazardous substance, Respondent shall immediately notify EPA's EPA Project Coordinator at (303) 312-6762 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the

reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001, et seq.

VII. AUTHORITY OF THE EPA PROJECT COORDINATOR

47. The EPA Project Coordinator shall be responsible for overseeing the proper and complete implementation of this Order. The Project Coordinator shall have the authority vested in an OSC by the NCP, 40 C.F.R. § 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondent at the Site. Absence of the EPA Project Coordinator from the Site shall not be cause for stoppage of Work unless specifically directed by the EPA Project Coordinator.

48. EPA and Respondent shall have the right to change their respective, designated Project Coordinators. EPA shall notify Respondent, and Respondent shall notify EPA five (5) days before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

49. Violation of any provision of this Order may subject Respondent to civil penalties of up to thirty-two thousand five hundred dollars (\$32,500) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606.

IX. RESERVATION OF RIGHTS

50. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health or welfare or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances or pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any Response Costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

X. OTHER CLAIMS

51. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or its

directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

52. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

53. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims

of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

XI. MODIFICATIONS

54. Modifications to any plan or schedule under this Order may be made in writing by the EPA Project Coordinator or at the EPA Project Coordinator's oral direction. If the EPA Project Coordinator makes an oral modification, it will be memorialized in writing within seven (7) days; provided, however, that the effective date of the modification shall be the date of the EPA Project Coordinator's oral direction. The rest of the Order, or any other portion of the Order may only be modified in writing by signature of the undersigned EPA program director.

55. If Respondent seeks permission to deviate from any approved plan or schedule or the Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

56. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order unless it is formally modified. No failure or delay by EPA to acknowledge, or make a decision with regard to, any request by Respondent to deviate from any approved plan or schedule or from the requirements and procedures set forth in the Work Plan shall relieve Respondent of its obligations to comply with all requirements of this Order unless it is formally modified in accordance with the procedures set forth herein.

XII. NOTICE OF COMPLETION

57. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to Respondent. If EPA determines that any Removal Actions have not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

58. The Administrative Record supporting these Removal Actions is available for review during normal business hours at the EPA Region 8 Superfund Records Center on the 5th floor, at 999 18th Street, in Denver, CO.

XIV. OPPORTUNITY TO CONFER

59. Within five (5) days after the effective date of this Order, Respondent may request a conference with EPA. Any such conference shall be held within seven (7) days after the effective date unless extended by agreement of EPA and Respondent. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

60. If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments in writing to EPA within three (3) days following the conference, or within ten (10) days following issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this Paragraph, shall be directed to James Stearns, Enforcement Attorney, U.S. EPA (8ENF-L), 999 18th Street, Suite 300, Denver, CO 80202-2466, telephone (303) 312-6912.

XV. INSURANCE

61. At least seven (7) days prior to commencing any on-site Work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XVI. ADDITIONAL REMOVAL ACTIONS

62. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health or welfare or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health or welfare or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by EPA as additional removal actions. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within (20) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the provisions and schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least 48 hours prior to performing any on-site work pursuant

to the EPA approved Work Plan. Respondent shall not commence or undertake any removal actions at the Site without prior EPA approval. This Section does not alter or diminish the EPA Project Coordinator's authority to make oral modifications to any plan or schedule pursuant to Section XI.

XVII. SEVERABILITY

63. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order,

Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XVIII. EFFECTIVE DATE

64. This Order shall be effective five (5) days after the Order is signed by EPA.

Issued

IT IS SO ORDERED:

By: **SIGNED for M. Dodson**

Date: **06-28-06**

David Ostrander, Director

Preparedness, Assessment, and Emergency Response Program

Office of Ecosystems Protection and Remediation

U.S. Environmental Protection Agency, Region 8

EFFECTIVE DATE: **9-12-06**

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON SEPTEMBER 7, 2006.